

108TH CONGRESS
1ST SESSION

H. R. 1116

To reform the medical malpractice insurance business, to provide for Federal alternative medical malpractice insurance, and to limit frivolous lawsuits.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2003

Mr. CONYERS (for himself, Ms. BERKLEY, Mr. BAIRD, Mr. BERMAN, Mr. WEXLER, Mr. DELAHUNT, Mr. NADLER, Ms. NORTON, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reform the medical malpractice insurance business, to provide for Federal alternative medical malpractice insurance, and to limit frivolous lawsuits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medical Malpractice
5 Insurance and Litigation Reform Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
 Sec. 2. Table of contents.

TITLE I—MEDICAL MALPRACTICE INSURANCE REFORM

- Sec. 101. Prohibition on anticompetitive activities by medical malpractice insurers.
 Sec. 102. Medical malpractice insurance price comparison.
 Sec. 103. Procedural requirements for medical malpractice insurers' proposed rate increases.

TITLE II—FEDERAL MEDICAL MALPRACTICE INSURANCE ASSOCIATION

- Sec. 201. Establishment; purpose.
 Sec. 202. Board of directors.
 Sec. 203. Administration.
 Sec. 204. Rates.
 Sec. 205. Investment policy.
 Sec. 206. Medical malpractice risk management program.
 Sec. 207. Seed money to be funded by Treasury Department loan.
 Sec. 208. Disclosure of data by medical malpractice insurers.
 Sec. 209. Annual report by Chairperson.
 Sec. 210. Financial matters.
 Sec. 211. Definitions.

TITLE III—LIMITING FRIVOLOUS MEDICAL MALPRACTICE SUITS

- Sec. 301. Health care specialist affidavit.
 Sec. 302. Sanctions for frivolous actions and pleadings.
 Sec. 303. Mandatory mediation.
 Sec. 304. Applicability.
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1 TITLE I—MEDICAL MAL- 2 PRACTICE INSURANCE RE- 3 FORM

4 SEC. 101. PROHIBITION ON ANTICOMPETITIVE ACTIVITIES 5 BY MEDICAL MALPRACTICE INSURERS.

6 Notwithstanding any other provision of law, nothing
 7 in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., com-
 8 monly known as the “McCarran-Ferguson Act”) shall be
 9 construed to permit commercial insurers to engage in any
 10 form of price fixing, bid rigging, or market allocations in
 11 connection with the conduct of the business of providing

1 medical malpractice insurance. This section does not apply
2 to the information-gathering and rate-setting activities of
3 any State commissions of insurance, or any other State
4 regulatory body with authority to set insurance rates.

5 **SEC. 102. MEDICAL MALPRACTICE INSURANCE PRICE COM-**
6 **PARISON.**

7 (a) INTERNET SITE.—Not later than 90 days after
8 the date of the enactment of this Act, and after consulta-
9 tion with the medical malpractice insurance industry, the
10 Secretary of Health and Human Services shall establish
11 an interactive internet site which shall enable any health
12 care provider licensed in the United States to obtain a
13 quote from each medical malpractice insurer licensed to
14 write the type of coverage sought by the provider.

15 (b) ONLINE FORMS.—

16 (1) IN GENERAL.—The internet site shall en-
17 able health care providers to complete an online
18 form that shall capture a comprehensive set of infor-
19 mation sufficient to generate a quote for each in-
20 surer. The Secretary shall develop transmission soft-
21 ware components which allow such information to be
22 formatted for delivery to each medical malpractice
23 insurer based on the requirements of the computer
24 system of the insurer.

1 (2) PROTECTION OF CONFIDENTIALITY OF IN-
2 FORMATION DISCLOSED.—All information provided
3 by a health care provider for purposes of generating
4 a quote through the internet site shall be used only
5 for that purpose.

6 (c) INTEGRATION OF RATING CRITERIA.—The Sec-
7 retary shall integrate the rating criteria of each insurer
8 into its online form after consultation with each insurer.
9 The Secretary shall integrate such criteria using one of
10 the following methods:

11 (1) Developing a customized interface with the
12 insurer's own rating engine.

13 (2) Accessing a third-party rating engine of the
14 insurer's choice.

15 (3) Loading the carrier's rating information
16 into a rating engine operated by the Secretary.

17 (4) Any other method agreed on between the
18 Secretary and the insurer.

19 (d) PRESENTATION OF QUOTES.—After a health care
20 provider has answered all the questions appearing on the
21 online form, such provider will be presented with quotes
22 from each medical malpractice insurer licensed to write
23 the coverage requested by the provider.

24 (e) ACCURACY OF QUOTES.—Quotes provided at the
25 internet site shall at all times be accurate. Whenever any

1 insurer changes its rates, such rate changes shall be imple-
2 mented at the internet site by the Secretary, in consulta-
3 tion with the insurer, as soon as practicable, but in no
4 event later than 10 days after such changes take effect.
5 During any period during which an insurer has changed
6 its rates but the Secretary has not yet implemented such
7 changed rates on the internet site, quotes for that insurer
8 shall not be obtainable at the internet site.

9 (f) USER-FRIENDLY FEATURES.—The Secretary
10 shall design the internet site to incorporate user-friendly
11 formats and self-help guidance materials, and shall de-
12 velop a user-friendly internet user-interface.

13 (g) CONTACT INFORMATION.—The internet site shall
14 also provide contact information, including address and
15 telephone number, for each medical malpractice insurer
16 for which a provider obtains a quote at the site.

17 (h) REPORT.—Not later than December 31, 2004,
18 the Secretary shall submit a report to the Congress on
19 the development, implementation and effects of the inter-
20 net site. Such report shall be based on—

21 (1) the Secretary's consultation with health
22 care providers, medical malpractice insurers, State
23 insurance commissioners, and other interested par-
24 ties; and

1 (2) the Secretary's analysis of other informa-
2 tion available to the Secretary.

3 The report shall describe the Secretary's views concerning
4 the extent to which this section has contributed to increas-
5 ing the availability of medical malpractice insurance, and
6 the effect this section has had on the cost of medical mal-
7 practice insurance.

8 **SEC. 103. PROCEDURAL REQUIREMENTS FOR MEDICAL**
9 **MALPRACTICE INSURERS' PROPOSED RATE**
10 **INCREASES.**

11 (a) IN GENERAL.—Each State shall have in effect a
12 policy under which—

13 (1) any health care professional (as defined in
14 title III of this Act) licensed by the State has stand-
15 ing in any State administrative proceeding to chal-
16 lenge a proposed rate increase in medical mal-
17 practice insurance; and

18 (2) a provider of medical malpractice insurance
19 in the State may not implement a rate increase in
20 such insurance unless the provider, at minimum,
21 first submits to the appropriate State agency a de-
22 scription of the rate increase and a substantial jus-
23 tification for the rate increase.

24 (b) RULEMAKING.—The Attorney General shall pro-
25 mulgate rules to carry out this section.

1 (c) EFFECTIVE DATE.—The requirements of this sec-
2 tion shall take effect 1 year after the date of the enact-
3 ment of this Act.

4 **TITLE II—FEDERAL MEDICAL**
5 **MALPRACTICE INSURANCE**
6 **ASSOCIATION**

7 **SEC. 201. ESTABLISHMENT; PURPOSE.**

8 (a) ESTABLISHMENT.—There is established a body
9 corporate to be known as the Federal Medical Malpractice
10 Insurance Association, which shall be in the Department
11 of Health and Human Services.

12 (b) OFFICES.—The Association shall maintain its
13 principal office in the District of Columbia and shall be
14 deemed, for purposes of venue in civil actions, to be a resi-
15 dent thereof. Agencies or offices may be established by the
16 Association in such other place or places as it may deem
17 necessary or appropriate in the conduct of its operations.

18 (c) PURPOSE.—The purpose of the Association shall
19 be to provide medical malpractice insurance based on cus-
20 tomary coverage terms and liability amounts in states
21 where such insurance is unavailable or is unavailable at
22 reasonable and customary terms, as determined by the As-
23 sociation.

24 **SEC. 202. BOARD OF DIRECTORS.**

25 (a) APPOINTMENT OF BOARD.—

1 (1) IN GENERAL.—There is hereby established
2 a board of directors for the Association, consisting
3 of 5 members appointed by the President, with the
4 advice and consent of the Senate.

5 (2) INITIAL APPOINTMENTS.—The first 5 mem-
6 bers shall be appointed not later than 90 days after
7 the date of the enactment of this Act. Of the first
8 5 members appointed, each shall serve a term end-
9 ing on July 1 of one of the following years: 2004,
10 2005, 2006, 2007, and 2008, as determined by lot
11 amongst themselves.

12 (3) SUBSEQUENT MEMBERS; VACANCIES.—Each
13 member appointed after the first 5 members shall be
14 appointed to a term of 5 years. In the case of a va-
15 cancy, the member appointed to fill the vacancy shall
16 serve the remainder of the uncompleted term to
17 which the vacancy relates.

18 (b) ELIGIBILITY.—Any person may be a director
19 who—

20 (1) does not have any interest as a stockholder,
21 employee, attorney, agent, broker, or contractor of
22 an insurance entity who writes medical malpractice
23 insurance or whose affiliates write medical mal-
24 practice insurance; and

1 (2) is of good moral character and who has
2 never pleaded guilty to, or been found guilty of, a
3 felony.

4 (c) CHAIRPERSON.—The board shall annually elect a
5 chairperson and any other officers it deems necessary for
6 the performance of its duties. Board committees and sub-
7 committees may also be formed.

8 (d) AUTHORITY.—The board is vested with full
9 power, authority, and jurisdiction over the Association.
10 The board may perform all acts necessary or convenient
11 in the administration of the Association or in connection
12 with the insurance business to be carried on by the Asso-
13 ciation. In this regard, the board is empowered to function
14 in all aspects as a governing body of a private insurance
15 carrier.

16 **SEC. 203. ADMINISTRATION.**

17 (a) ADMINISTRATOR.—The board shall appoint, and
18 fix the pay of, an administrator, who shall serve at the
19 pleasure of the board. The administrator shall be ap-
20 pointed from among individuals with proven successful ex-
21 perience as an executive at the general management level
22 in the insurance industry. The administrator shall act as
23 the Association's chief executive officer, in charge of the
24 day-to-day operations and management of the Association.

1 The first administrator shall be appointed not later than
2 90 days after the date of the enactment of this Act.

3 (b) COMMENCEMENT OF OPERATIONS.—The board
4 shall ensure that the Association is fully operational not
5 later than 180 days after the date of the enactment of
6 this Act.

7 **SEC. 204. RATES.**

8 The board shall have full power and authority to es-
9 tablish rates to be charged by the Association for insur-
10 ance. The board shall contract for the services of or hire
11 an independent actuary, a member in good standing with
12 the American Academy of Actuaries, to develop and rec-
13 ommend actuarially sound rates. Rates shall be set at
14 amounts sufficient, when invested, to carry all claims to
15 maturity, meet the reasonable expenses of conducting the
16 business of the Association and maintain a reasonable sur-
17 plus. The Association shall conduct a medical malpractice
18 insurance program that shall be neither more nor less than
19 self-supporting. The Association is authorized to purchase
20 reinsurance related to its underlying insurance obligations.

21 **SEC. 205. INVESTMENT POLICY.**

22 The board shall formulate and adopt an investment
23 policy and supervise the investment activities of the Asso-
24 ciation. The administrator may invest and reinvest the
25 surplus or reserves of the Association subject to any limi-

1 tations imposed on domestic insurance companies by ap-
2 plicable laws. The Association may retain an independent
3 investment counsel. The board shall periodically review
4 and appraise the investment strategy being followed and
5 the effectiveness of such services. Any investment counsel
6 retained or hired shall periodically report to the board on
7 investment results and related matters.

8 **SEC. 206. MEDICAL MALPRACTICE RISK MANAGEMENT**
9 **PROGRAM.**

10 The administrator shall formulate, implement, and
11 monitor a medical malpractice risk management program
12 for all policyholders. To the extent practicable, the admin-
13 istrator shall obtain input from the National Association
14 of Insurance Commissioners in developing such program.
15 The administrator or board may refuse to insure, or may
16 terminate the insurance of, any insured who disregards
17 the medical malpractice risk management plan. In deter-
18 mining the premium payable by an insured, the Associa-
19 tion shall consider the compliance of the insured with the
20 Association's medical malpractice risk management.

21 **SEC. 207. SEED MONEY TO BE FUNDED BY TREASURY DE-**
22 **PARTMENT LOAN.**

23 (a) NO APPROPRIATION.—The Association shall not
24 receive any appropriation, directly or indirectly, except as
25 provided in subsection (b).

1 (b) INITIAL LOANS.—During the first year of the As-
 2 sociation’s operations, the Secretary of the Treasury shall
 3 make 1 or more loans to the Association in such amounts
 4 as may be necessary for start-up funding and initial cap-
 5 italization of the Association. The board of the Association
 6 shall make application to the Department of the Treasury
 7 for the loans, stating the amount to be loaned to the Asso-
 8 ciation. The loans shall be for a term of 5 years and, at
 9 the time the application for such loans is approved, shall
 10 bear interest at an annual rate determined by the Sec-
 11 retary of the Treasury. Thereafter, the Association may
 12 seek such additional loans or funding as may be author-
 13 ized by law.

14 **SEC. 208. DISCLOSURE OF DATA BY MEDICAL MAL-**
 15 **PRACTICE INSURERS.**

16 Not later than March 1 of each year, each insurer
 17 writing medical malpractice insurance coverage to a health
 18 care provider shall file with the Chairperson a copy of the
 19 annual statement it files with the department of insurance
 20 in the State in which it is domiciled. Each such insurer
 21 shall also file the following information with the Chair-
 22 person, to the extent it is not disclosed on the insurer’s
 23 annual statement:

24 (1) Information on closed claims.

1 (2) Information regarding verdicts, payment,
2 and severity of injury in connection with verdicts.

3 (3) Information on rate changes.

4 (4) Information on premiums and losses by
5 medical specialty.

6 (5) Information on premiums and losses by ex-
7 perience of the insured.

8 (6) Information on the performance of the in-
9 vestments of the insurer.

10 **SECTION 209. ANNUAL REPORT BY CHAIRPERSON.**

11 (a) IN GENERAL.—The Chairperson shall file an an-
12 nual report with the President and the Congress, which
13 shall include—

14 (1) a statement of the Association’s accounts,
15 funds, and securities;

16 (2) copies of any other reports required to be
17 filed by applicable law and by the National Associa-
18 tion of Insurance Commissioners;

19 (3) any appropriate request for additional
20 loans;

21 (4) an assessment of the medical malpractice
22 insurance marketplace; and

23 (5) to the extent practicable, an assessment as
24 to why health care providers are unable to obtain
25 malpractice insurance in certain markets, or are un-

1 able to obtain malpractice insurance at reasonable
2 and customary terms.

3 (b) OBLIGATIONS OF CHAIRPERSON.—The Chair-
4 person shall determine what data shall be included under
5 section 208 by insurers writing medical malpractice insur-
6 ance coverage to a health care provider.

7 **SEC. 210. FINANCIAL MATTERS.**

8 (a) BUDGET.—The administrator shall annually sub-
9 mit to the board for its approval an estimated budget of
10 the entire expense of administering the Association for the
11 succeeding calendar year having due regard to the busi-
12 ness interests and contract obligations of the Association.

13 (b) DETERMINATION OF CASH DIVIDEND.—The in-
14 curred loss experience and expense of the Association shall
15 be ascertained each year to include but not be limited to
16 estimates of outstanding liabilities for claims reported to
17 the Association but not yet paid and liabilities for claims
18 arising from injuries which have occurred but have not
19 yet been reported to the Association. If there is an excess
20 of assets over liabilities, necessary reserves and a reason-
21 able surplus, then a cash dividend shall be declared or a
22 credit allowed to any health care provider who has com-
23 plied with the Association's medical malpractice risk man-
24 agement program.

1 **SEC. 211. DEFINITIONS.**

2 In this title, the following definitions apply:

3 (1) ASSOCIATION.—The term “Association”
4 means the Federal Medical Malpractice Insurance
5 Association established under section 201.

6 (2) MEDICAL MALPRACTICE INSURANCE.—The
7 term “medical malpractice insurance” means insur-
8 ance against legal liability of the insured, and
9 against loss, damage, or expense incident to a claim
10 of such liability arising out of the death or injury of
11 any person due to medical, dental, podiatric, cer-
12 tified nurse-midwifery, or hospital malpractice by
13 any licensed physician, dentist, podiatrist, certified
14 nurse-midwife, certified registered nurse anesthetist,
15 hospital, or clinical psychologist.

16 (3) HOSPITAL.—The term “hospital” means
17 any of the following:

18 (A) Any facility defined as a hospital
19 under State law and issued an operating certifi-
20 cate as a hospital or nursing home, and those
21 distinct parts of a facility that are subject to
22 the powers of visitation, examination, inspec-
23 tion, and investigation of the State mental hy-
24 giene agency which provide hospital or nursing
25 home service.

1 (B) Any ambulance service which is reg-
 2 istered or certified under State law and which
 3 is designed and equipped to provide definitive
 4 acute medical care pursuant to rules and regu-
 5 lations of the State health agency, which must
 6 include, but not be limited to, the provision of
 7 advanced life support services.

8 (C) Any community mental health center
 9 operated by a State or unit of local government,
 10 holding an operating certificate issued by the
 11 State mental hygiene agency.

12 (D) Any certified public or voluntary non-
 13 profit home care service agency which possesses
 14 a valid certificate of approval issued under
 15 State public health law.

16 **TITLE III—LIMITING FRIVOLOUS** 17 **MEDICAL MALPRACTICE SUITS**

18 **SEC. 301. HEALTH CARE SPECIALIST AFFIDAVIT.**

19 (a) REQUIRING SUBMISSION WITH COMPLAINT.—No
 20 medical malpractice liability action may be brought by any
 21 individual unless, at the time the individual brings the ac-
 22 tion (except as provided in subsection (b)(1)), it is accom-
 23 panied by the affidavit of a qualified specialist that in-
 24 cludes the specialist's statement of belief that, based on
 25 a review of the available medical record and other relevant

1 material, there is a reasonable and meritorious cause for
2 the filing of the action against the defendant.

3 (b) EXTENSION IN CERTAIN INSTANCES.—

4 (1) IN GENERAL.—Subject to paragraph (2),
5 subsection (a) shall not apply with respect to an in-
6 dividual who brings a medical malpractice liability
7 action without submitting an affidavit described in
8 such subsection if, as of the time the individual
9 brings the action, the individual has been unable to
10 obtain adequate medical records or other informa-
11 tion necessary to prepare the affidavit.

12 (2) DEADLINE FOR SUBMISSION WHERE EX-
13 TENSION APPLIES.—In the case of an individual who
14 brings an action for which paragraph (1) applies,
15 the action shall be dismissed unless the individual
16 (or the individual’s attorney) submits the affidavit
17 described in subsection (a) not later than 90 days
18 after obtaining the information described in such
19 subparagraph.

20 (c) QUALIFIED SPECIALIST DEFINED.—In sub-
21 section (a), a “qualified specialist” means, with respect
22 to a medical malpractice liability action, a health care pro-
23 fessional who is reasonably believed by the individual
24 bringing the action (or the individual’s attorney)—

1 (1) to be knowledgeable in the relevant issues
2 involved in the action,

3 (2) to practice (or to have practiced) or to teach
4 (or to have taught) in the same area of health care
5 or medicine that is at issue in the action, and

6 (3) in the case of an action against a physician,
7 to be board certified in a specialty relating to that
8 area of medicine.

9 (d) CONFIDENTIALITY OF SPECIALIST.—Upon a
10 showing of good cause by a defendant, the court may as-
11 certain the identity of a specialist referred to in subsection
12 (a) while preserving confidentiality.

13 **SEC. 302. SANCTIONS FOR FRIVOLOUS ACTIONS AND**
14 **PLEADINGS.**

15 (a) SIGNATURE REQUIRED.—Every pleading, written
16 motion, and other paper in any medical malpractice liabil-
17 ity action shall be signed by at least 1 attorney of record
18 in the attorney's individual name, or, if the party is not
19 represented by an attorney, shall be signed by the party.
20 Each paper shall state the signer's address and telephone
21 number, if any. An unsigned paper shall be stricken unless
22 omission of the signature is corrected promptly after being
23 called to the attention of the attorney or party.

24 (b) CERTIFICATE OF MERIT.—By presenting to the
25 court (whether by signing, filing, submitting, or later ad-

1 vocating) a pleading, written motion, or other paper, an
 2 attorney or unrepresented party is certifying that to the
 3 best of the person's knowledge, information and belief,
 4 formed after an inquiry reasonable under the cir-
 5 cumstances—

6 (1) it is not being presented for any improper
 7 purpose, such as to harass or to cause unnecessary
 8 delay or needless increase in the cost of litigation;

9 (2) the claims, defenses, and other legal conten-
 10 tions therein are warranted by existing law or by a
 11 nonfrivolous argument for the extension, modifica-
 12 tion, or reversal of existing law or the establishment
 13 of new law; and

14 (3) the allegations and other factual contentions
 15 have evidentiary support or, if specifically so identi-
 16 fied, are reasonable based on a lack of information
 17 or belief.

18 (c) MANDATORY SANCTIONS.—

19 (1) FIRST VIOLATION.—If, after notice and a
 20 reasonable opportunity to respond, a court, upon
 21 motion or upon its own initiative, determines that
 22 subsection (b) has been violated, the court shall find
 23 each attorney or party in violation in contempt of
 24 court and shall require the payment of costs and at-
 25 torneys fees. The court may also impose additional

1 appropriate sanctions, such as striking the plead-
2 ings, dismissing the suit, and sanctions plus interest,
3 upon the person in violation, or upon both such per-
4 son and such person's attorney or client (as the case
5 may be).

6 (2) SECOND VIOLATION.—If, after notice and a
7 reasonable opportunity to respond, a court, upon
8 motion or upon its own initiative, determines that
9 subsection (b) has been violated and that the attor-
10 ney or party with respect to which the determination
11 was made has committed one previous violation of
12 subsection (b) before this or any other court, the
13 court shall find each such attorney or party in con-
14 tempt of court and shall require the payment of
15 costs and attorneys fees, and require such person in
16 violation (or both such person and such person's at-
17 torney or client (as the case may be)) to pay a mon-
18 etary fine. The court may also impose additional ap-
19 propriate sanctions, such as striking the pleadings,
20 dismissing the suit and sanctions plus interest, upon
21 such person in violation, or upon both such person
22 and such person's attorney or client (as the case
23 may be).

24 (3) THIRD VIOLATION.—If, after notice and a
25 reasonable opportunity to respond, a court, upon

1 motion or upon its own initiative, determines that
2 subsection (b) has been violated and that the attor-
3 ney or party with respect to which the determination
4 was made has committed more than one previous
5 violation of subsection (b) before this or any other
6 court, the court shall find each such attorney or
7 party in contempt of court, refer each such attorney
8 to one or more appropriate State bar associations
9 for disciplinary proceedings, require the payment of
10 costs and attorneys fees, and require such person in
11 violation (or both such person and such person's at-
12 torney or client (as the case may be)) to pay a mon-
13 etary fine. The court may also impose additional ap-
14 propriate sanctions, such as striking the pleadings,
15 dismissing the suit, and sanctions plus interest,
16 upon such person in violation, or upon both such
17 person and such person's attorney or client (as the
18 case may be).

19 **SEC. 303. MANDATORY MEDIATION.**

20 (a) IN GENERAL.—In any medical malpractice liabil-
21 ity action, before such action comes to trial, mediation
22 shall be required. Such mediation shall be conducted by
23 one or more mediators who are selected by agreement of
24 the parties or, if the parties do not agree, who are quali-
25 fied under applicable State law and selected by the court.

1 (b) REQUIREMENTS.—Mediation under subsection
2 (a) shall be made available by a State subject to the fol-
3 lowing requirements:

4 (1) Participation in such mediation shall be in
5 lieu of any alternative dispute resolution method re-
6 quired by any other law or by any contractual ar-
7 rangement made by or on behalf of the parties be-
8 fore the commencement of the action.

9 (2) Each State shall disclose to residents of the
10 State the availability and procedures for resolution
11 of consumer grievances regarding the provision of
12 (or failure to provide) health care services, including
13 such mediation.

14 (3) Each State shall provide that such medi-
15 ation may begin before or after, at the option of the
16 claimant, the commencement of a medical mal-
17 practice liability action.

18 (4) The Attorney General, in consultation with
19 the Secretary of Health and Human Services, shall,
20 by regulation, develop requirements with respect to
21 such mediation to ensure that it is carried out in a
22 manner that—

23 (A) is affordable for the parties involved;

24 (B) encourages timely resolution of claims;

1 (C) encourages the consistent and fair res-
2 olution of claims; and

3 (D) provides for reasonably convenient ac-
4 cess to dispute resolution.

5 (c) FURTHER REDRESS AND ADMISSIBILITY.—Any
6 party dissatisfied with a determination reached with re-
7 spect to a medical malpractice claim as a result of an al-
8 ternative dispute resolution method applied under this sec-
9 tion shall not be bound by such determination. The results
10 of any alternative dispute resolution method applied under
11 this section, and all statements, offers, and communica-
12 tions made during the application of such method, shall
13 be inadmissible for purposes of adjudicating the claim.

14 **SEC. 304. APPLICABILITY.**

15 (a) IN GENERAL.—Except as provided in section 303,
16 this title shall apply with respect to any medical mal-
17 practice liability action brought on or after the date of
18 the enactment of this Act in any State or Federal court,
19 except that this title shall not apply to a claim or action
20 for damages arising from a vaccine-related injury or death
21 to the extent that title XXI of the Public Health Service
22 Act applies to the claim or action.

23 (b) PREEMPTION.—The provisions of this title shall
24 preempt any State law to the extent such law relates to

1 a type of tort reform included under this title and is incon-
2 sistent with such provisions.

3 (c) EFFECT ON SOVEREIGN IMMUNITY AND CHOICE
4 OF LAW OR VENUE.—Nothing in this title shall be con-
5 strued to—

6 (1) waive or affect any defense of sovereign im-
7 munity asserted by any State under any provision of
8 law;

9 (2) waive or affect any defense of sovereign im-
10 munity asserted by the United States;

11 (3) affect the applicability of any provision of
12 the Foreign Sovereign Immunities Act of 1976;

13 (4) preempt State choice-of-law rules with re-
14 spect to claims brought by a foreign nation or a cit-
15 izen of a foreign nation; or

16 (5) affect the right of any court to transfer
17 venue or to apply the law of a foreign nation or to
18 dismiss a claim of a foreign nation or of a citizen
19 of a foreign nation on the ground of inconvenient
20 forum.

21 (d) FEDERAL COURT JURISDICTION NOT ESTAB-
22 LISHED ON FEDERAL QUESTION GROUNDS.—Nothing in
23 this title shall be construed to establish any jurisdiction
24 in the district courts of the United States over medical

1 malpractice liability actions on the basis of section 1331
2 or 1337 of title 28, United States Code.

3 **SEC. 305. DEFINITIONS.**

4 In this title, the following definitions apply:

5 (1) **ALTERNATIVE DISPUTE RESOLUTION METH-**
6 **OD.**—The term “alternative dispute resolution meth-

7 od” means a method that provides for the resolution
8 of medical malpractice claims in a manner other
9 than through medical malpractice liability actions.

10 (2) **CLAIMANT.**—The term “claimant” means
11 any person who alleges a medical malpractice claim,
12 and any person on whose behalf such a claim is al-

13 leged, including the decedent in the case of an action
14 brought through or on behalf of an estate.

15 (3) **HEALTH CARE PROFESSIONAL.**—The term
16 “health care professional” means any individual who
17 provides health care services in a State and who is
18 required by the laws or regulations of the State to
19 be licensed or certified by the State to provide such
20 services in the State.

21 (4) **HEALTH CARE PROVIDER.**—The term
22 “health care provider” means any organization or
23 institution that is engaged in the delivery of health
24 care services in a State and that is required by the
25 laws or regulations of the State to be licensed or cer-

1 tified by the State to engage in the delivery of such
2 services in the State.

3 (5) INJURY.—The term “injury” means any ill-
4 ness, disease, or other harm that is the subject of
5 a medical malpractice liability action or a medical
6 malpractice claim.

7 (6) MANDATORY.—The term “mandatory”
8 means required to be used by the parties to attempt
9 to resolve a medical malpractice claim notwith-
10 standing any other provision of an agreement, State
11 law, or Federal law.

12 (7) MEDIATION.—The term “mediation” means
13 a settlement process coordinated by a neutral third
14 party and without the ultimate rendering of a formal
15 opinion as to factual or legal findings.

16 (8) MEDICAL MALPRACTICE CLAIM.—The term
17 “medical malpractice claim” means a claim against
18 a health care provider, a health care professional, or
19 a blood or tissue bank licensed or registered by the
20 Food and Drug Administration in which a claimant
21 alleges that injury was caused by the provision of (or
22 the failure to provide) health care services, except
23 that such term does not include—

24 (A) any claim based on an allegation of an
25 intentional tort; or

1 (B) any claim based on an allegation that
2 a product is defective or unreasonably dan-
3 gerous.

4 (9) MEDICAL MALPRACTICE LIABILITY AC-
5 TION.—The term “medical malpractice liability ac-
6 tion” means a civil action brought in a State or Fed-
7 eral court against a health care provider, a health
8 care professional, or a blood or tissue bank licensed
9 or registered by the Food and Drug Administration
10 in which the plaintiff alleges a medical malpractice
11 claim.

12 (10) STATE.—The term “State” includes the
13 District of Columbia and any commonwealth, terri-
14 tory, or possession of the United States.

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